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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

LANE KELLY WHITTENBERG,

Plaintiff,

v.

JOSE TOVAR AYALA; PHILIP
BLACKMAN; and, MATTHEW WHYTE, in
their individual capacities, and DOE 1,

Defendants.

Case No. 1:22-CV-00197-JLT-EPG

**STIPULATION OF THE PARTIES
REGARDING THE DEPOSITION OF
PLAINTIFF; ORDER OF THE COURT**

Plaintiff, LANE KELLY WHITTENBERG (“WHITTENBERG”) and Defendants, JOSE
TOVAR AYALA, PHILLIP BLACKMAN, and MATTHEW WHYTE, by and through their
respective counsel, hereby jointly Stipulate and Agree to the following:

1 1. WHITTENBERG is currently incarcerated and confined in **USP Victorville, U.S.**
2 **Penitentiary** located at Adelanto, California.

3 2. WHITTENBERG's identification number at this prison is Register **#21427509**.

4 3. WHITTENBERG, as the Plaintiff, has asserted various claims, allegations and seeks
5 the recovery of monetary damages against each of the three named Defendants.

6 4. As such, Defendants are entitled to take the deposition of WHITTENBERG in order
7 to question him regarding the facts and circumstances of the alleged events, his alleged damages, and
8 other aspects of this litigation.

9 5. Due to WHITTENBERG's incarceration, an Order from this Court, pursuant to FRCP,
10 Rule 30(a)(2)(B), is required in order to complete the oral deposition of Plaintiff.

11 6. The parties to this Stipulation have "met and conferred" on this issue.

12 7. The parties request for "leave" of Court to take the deposition of WHITTENBERG as
13 further discussed by the parties and the Court during the February 1, 2023 Mid-Discovery Status
14 Conference at which time the Court indicated it would entertain a Stipulation from the parties
15 requesting "leave" to take the deposition of WHITTENBERG.

16 8. The parties agree that "good cause" exists for the deposition of WHITTENBERG in
17 this civil action.

18 9. The parties agree that the deposition will be set on a date and time that is agreeable to
19 all counsel and the respective prison.

20 10. The parties agree that, to the extent permitted by the above referenced prison that is
21 housing WHITTENBERG, a reasonable amount of time should be extended to Plaintiff's counsel for
22 a pre-deposition meeting.

23 11. The parties request that WHITTENBERG be made available for an "in-person"
24 deposition in accordance with the rules, regulations and requirements of the penitentiary, which
25 would allow for Plaintiff, his attorney(s), Defendants' attorney(s) and the Court Reporter to all be in
26 the same room as WHITTENBERG to complete this deposition.

27 12. The parties further agree, if permitted by the prison, that either video conferencing or
28 telephonic conferencing be permitted to allow the named Defendants to "appear" at requested

1 Plaintiff's "in person" deposition, remotely, via these means. The parties however stipulate that
2 Defendants will only be allowed to listen in on the deposition, will not participate or otherwise speak
3 during the deposition, and that if their "appearance" is by video conference, their video-camera will
4 be off during the deposition. Defendants however will be permitted to speak to their attorney of
5 record and use their cameras during breaks.

6 13. The parties stipulate and agree that, if permitted by the penitentiary, counsel attending
7 the "in person" deposition of WHITTENBERG will be permitted to bring in a tablet, laptop or other
8 device which would allow Plaintiff to view security camera footage that is relevant to the subject
9 litigation.

10 14. The parties agree that, should the above referenced prison not allow for an "in person"
11 deposition, then WHITTENBERG be permitted, assuming the availability of computer or tablet for
12 Plaintiff's use, to participate in a remote deposition. Under these events, WHITTENBERG's
13 deposition would be in accordance with the previously executed "Joint Stipulation Concerning
14 Agreed Upon Protocol for Conducting Remote Depositions."

15 Dated: February 17, 2023

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

17 By: /s/ Daniel L. Wainwright
18 Mart B. Oller IV
19 Daniel L. Wainwright
20 Attorneys for Defendants
JOSE TOVAR AYALA; PHILIP BLACKMAN; and,
MATTHEW WHYTE

23 Dated: February 17, 2023

24 By: /s/ Raquel M. Busani
25 Robert J. Rosati, Esq.
26 Raquel M. Busani, Esq.
27 Attorneys for Plaintiff,
LANE KELLY WHITTENBERG

28 029253-000239 8923415.1

ORDER OF THE COURT GRANTING LEAVE TO DEPOSE PLAINTIFF

The Court having considered the parties Stipulation and good cause appearing, the Court hereby ORDERS that:

1. Defendants, JOSE TOVAR AYALA; PHILIP BLACKMAN; and, MATTHEW WHYTE, have this Court's leave to take the oral deposition of Plaintiff (and Inmate), LANE KELLY WHITTENBERG, pursuant to Rule 30 of the Federal Rules of Civil Procedure and the terms of the parties' stipulation;
2. Prior thereto, counsel for Defendants shall give notice of this Order to USP Victorville, U.S. Penitentiary, located at Adelanto, CA, and shall coordinate with them so that the taking of the deposition of Inmate LANE KELLY WHITTENBERG shall be set and noticed for a time and place that it is agreeable to the parties but that will also minimize disruption to the orderly operations of the prison.

IT IS SO ORDERED.

Dated: **February 17, 2023**

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE